

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Brian G. Lau, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Proposed Regulation 18421.7 and Amendment to Regulation 18401

Date: November 21, 2007

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18421.7 and amendment of Regulation 18401 in February.

Reason for Proposal: Sections 89510-89518 restrict the personal use of campaign funds. Under these general provisions, a candidate may only use campaign funds if the expenditure bears a reasonable relationship to a political, legislative, or governmental purpose (a “PLG”). (Section 89512(a).) However, if an expenditure of campaign funds confers a “substantial personal benefit”¹ on a candidate; pays for a personal gift; or pays for the travel or accommodations of a candidate, elected officer, or anyone with the authority to approve the expenditure of campaign funds, the expenditure must be directly related to a PLG. (Sections 89512(b) and 89513.)

Section 84211 requires the disclosure of specific expenditures on campaign statements. While Section 84211(k)(4) requires a description of the consideration for which an expenditure of one hundred dollars or more is made², we have not previously interpreted this requirement to include a description sufficient to identify a PLG for some expenditures. This is particularly troublesome for expenditures such as gifts, meals, and out-of-state travel because the PLG for these expenditures is not readily apparent.

Proposed Regulation 18421.7 would further define the description required under Section 84211(k)(4) for expenditures for gifts, meals, and out-of-state travel by committees controlled by

¹ “Substantial personal benefit” means an expenditure of campaign funds that results in a “direct personal benefit” with a value to the candidate of more than \$200. (Section 89511(b)(3).) An expenditure results in a “direct personal benefit” if within six months of the expenditure and without assistance or intervening influence or interruption the candidate or elected officer or member of his or her immediate family realizes an increase in his or her income or liabilities of more than \$200 from the expenditure or makes personal use of an asset obtained as a result of the expenditure. (Regulation 18960.)

² In pertinent part, Section 84211 requires a campaign statement to contain (1) the total amount of expenditures made during the period of the statement to persons who have received \$100 or more (Section 84211(i)); (2) the total amount of expenditures made during the period of the statement to persons who have received less than \$100 (Section 84211(j)); and (3) for each person to whom an expenditure of \$100 dollars or more has been made during the period of the statement the person’s name and street address, amount of the expenditure, a brief description of the consideration for which an expenditure was made (Section 84211(k)).

a candidate. Because the PLG for these expenditures is not readily apparent, proposed Regulation 18421.7 and the proposed amendment to Regulation 18401 impose specific requirements for disclosing these expenditures aimed at identifying the PLG.

Summary of Proposed Actions:

Proposed Regulation 18421.7 requires candidate controlled committees reporting an expenditure for a gift, a meal, or out-of-state travel to briefly state facts demonstrating the PLG. This explanation is required only when the committee is required to itemize the expenditure.

In addition to facts helping to establish the PLG, a committee reporting an expenditure under the proposed regulation is required to disclose basic and brief information to assess whether there is a benefit to the candidate, members of the candidate's household³, or other individuals with the authority to expend the committee's campaign funds. The specific information required is determined by whether the expenditure is for a gift, a meal, or out-of-state travel.

The proposed amendment to Regulation 18401, the recordkeeping requirements, requires committees to maintain records to support the information reported under proposed Regulation 18421.7. This amendment would require committees to document expenditures for gifts, meals, and out-of-state travel in a memorandum.

Substantive changes to Regulation 18401 are indicated in the attached copy in bold typeface. The amendment to Regulation 18401 also includes technical and non-substantive revisions.

Attachments:

- 1 – Proposed Regulation 18421.7**
- 2 – Proposed Amendment to Regulation 18401**
- 3 – Government Code Section 84211**
- 4 – Government Code Section 84104**

³ For the purposes of the proposed regulation, "household" includes the candidate's spouse, dependant children, and parents who reside with the candidate. (Section 89511(b)(4).)